

OCA 86-0642/1  
19 March 1986

MEMORANDUM FOR THE RECORD

SUBJECT: Conveying Agency Views to OMB - S. 1429

1. By Legislative Referral Memorandum dated 3 March 1986, the Office of Management and Budget (OMB) requested the Agency's views on S. 1429, the "Terrorist Prosecution Act" as passed by the Senate.

2. Those views had been previously provided to OMB in various conversations with this office; hence, no special response was required to the March 3rd memorandum.

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Legislation Division  
Office of Congressional Affairs

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**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503**

RECPT #

**SPECIAL**

March 3, 1986

**LEGISLATIVE REFERRAL MEMORANDUM**

**TO:**

Department of Justice  
Department of the Treasury  
~~Department of State~~  
Central Intelligence Agency  
Department of Transportation  
Department of Defense

**SUBJECT:** S. 1429, "Terrorist Prosecution Act," as passed by the Senate on February 19, 1986.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than March 14, 1986.

Direct your questions to Gregory Jones (395-3454), of this office.

  
James C. Murr for  
Assistant Director for  
Legislative Reference

**Enclosures**

cc: Karen Wilson  
Frank Kalder  
John Cooney  
Russ Neeley

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## CONGRESSIONAL RECORD — SENATE

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coin and Jefferson Memorials and, over in the distance, the Capitol.

He said, "Just to think, this is the most powerful city in the world and you and I are right in the middle of it, making decisions that are affecting the course of history."

Senator Eastland looked at Senator Holland and said, "Spessard, are you drunk?" (Laughter.)

It captures the attitude of Senator Eastland; that he was not going to let service here in Washington go to his head. He was a person who took his obligations seriously, but he did not take himself seriously.

He was not one to really tell stories, but he has become the subject of many flattering stories about the great sense of humor that he possessed all these years and which he brought to his job and endeared him to people throughout our State.

He was a person who had a great deal of influence throughout Mississippi. All of my life he has been our Senator. Along with Senator STENNIS, their combined service has probably not been surpassed by two Senators from any other individual State in terms of tenure of service, and I might add distinguished service.

So this is a time when I feel that it is appropriate for us to recognize the contributions that Senator Eastland made to this institution as chairman of the Judiciary Committee and as President pro tempore. He has had a distinguished career that we can all observe and praise.

He has a fine family, a wife, Libby Eastland, a wonderful woman; and four children, Nell, Ann, Sue, and his son Woods.

Most of his staff and his family were together just recently in Mississippi when we had an opportunity to dedicate the Federal court building in Jackson, MS, to Senator Eastland and name it for him.

On that occasion, there were many good things said about him. Roman Hruska was there, his close friend on the Republican side of the aisle of the Judiciary Committee where they had served for many years, Gov. J.P. Coleman spoke and so did Judge Charles Clark, Chief Justice of the Fifth Circuit Court of Appeals.

What came through, Mr. President, is that all Mississippians respected and appreciated the way Senator Eastland had served and worked for Mississippi's interest in the Senate for the years he served here.

It is my hope that we will be able to have a delegation of Senators attend his funeral on Friday. The services will be in Ruleville at the Methodist church there at 10 o'clock in the morning.

We have lost a great citizen in Mississippi with the passing of Senator Jim Eastland, and I have lost a very good friend.

Mr. STENNIS. Mr. President, will the Senator yield for 1 minute?

Mr. COCHRAN. I am happy to yield.

Mr. STENNIS. Mr. President, I want to commend and thank the Senator from Mississippi for the very earnest, sincere, and meaningful remarks which he has made about our former colleague and friend.

Senator Eastland and I served together for years in the Mississippi house of representatives. That is an experience that is worthwhile. We both distributed that around on Capitol Hill as best we could. We knew each other mighty well. We did not have to ask each other how we were going to vote on a matter because we already knew. We knew each other so well.

Quite seriously, Jim was a man that applied himself in a quiet way, and he knew how to get the jobs done. He was very appreciative, too, of the people's attitude because of the matters he had done and tried to do.

With respect to his fine family, mention has been made of the splendid young ladies, daughters, and sons, which they are. Libby Eastland is one of the finest ladies I have known. I talked to her by telephone yesterday, and she had her usual courage of moving forward.

Again, I commend the Senator from Mississippi for his remarks as well as the expression, feeling, and tone of them all.

Mr. President, I yield the floor.

Mr. HELMS. Mr. President, will the Senator yield to me?

Mr. COCHRAN. Mr. President, I am happy to yield to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the distinguished Senator.

Mr. President, I came to Washington the first time in late 1951. I came as administrative assistance to one of North Carolina's Senators who was a good friend of Jim Eastland. So many times Mr. Jim would come by our office. I was struck by the fact that he would take the time to pay a little attention to a young fellow from North Carolina who was then on the lower side of 30 years of age. I got to know him very well.

The Senator said that he did not tell many stories. I have to correct the Senator on that. He told me a lot of stories. They were all good. But he gave a lot of good advice as well. I remember one time I walked down the corridor with him, and a vote was on. I very proudly pushed the elevator button three times. As the Senator knows, pushing the elevator button three times back in those days was a command to the elevator operator to come no matter where he was headed or where he was. Senator Eastland noticed that. He said, "Jesse, do not do that around me anymore." He said, "That is the trouble with the U.S. Senate. People come up here enamored with the idea of pushing that button three times."

Senator Eastland endured his share of criticism in the media and elsewhere. I always reflected upon the fact that those who criticized Jim Eastland did not know him because here was a man totally devoted to the Constitution of the United States, and to the fundamentals of this country, and he was faithful to his people of Mississippi. Many times I observed people from the State who came to see him. They did not merely like Jim Eastland. They did not merely support Jim Eastland. They loved Jim Eastland. So did I.

I think it is accurate to say that the exception of the distinguished senior Senator from Mississippi and the distinguished Senator from Louisiana, I have been around the U.S. Senate about as long as anybody. Of course, I was here as a staff member originally.

But anybody who has known Jim Eastland has benefited from him. As the saying goes, we are diminished by any man's death, but I am enormously diminished by his. I will miss him. I know both Senators from Mississippi will miss him.

I thank the Senator for yielding to me.

I yield the floor.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from North Carolina.

Mr. HEFLIN. Mr. President, will the Senator from Mississippi yield?

Mr. COCHRAN. I am happy to yield to the distinguished Senator from Alabama.

Mr. HEFLIN. I know the Senate wants to move forward. I do not want to take much time. I would like to concur with the remarks that have been made. I did not serve with Senator Eastland. But I have known him over a number of years. I know that his reputation as being an effective, hard-working Senator, chairman, and President pro tempore will live in the annals of the history of the U.S. Senate.

Mr. COCHRAN. I thank the distinguished Senator from Alabama. Mr. President.

I yield the floor.

## TERRORIST PROSECUTION ACT

The PRESIDING OFFICER. Under the previous order, the clerk will now report Calendar No. 507.

The legislative clerk read as follows:

A bill (S. 1429), to amend title 18, United States Code, to authorize prosecution of terrorists who attack United States nationals abroad, and for other purposes.

The Senate proceeded to consider the bill (S. 1429) to amend title 18, United States Code, to authorize prosecution of terrorists who attack United States nationals abroad, and for other purposes, which had been reported from the Committee on the Judiciary, with an amendment to strike out all after the enacting clause, and insert the following:

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That this Act may be cited as the "Terrorist Prosecution Act of 1985".

Sec. 2. (a) Part I of title 18, United States Code, is amended by inserting after chapter 113 the following:

**"CHAPTER 113A—TERRORIST ACTS AGAINST UNITED STATES NATIONALS ABROAD**

**"2331. Findings and purpose.**

**"2332. Terrorist acts against United States nationals abroad.**

**"SEC. 2331. FINDINGS AND PURPOSE.**

"The Congress hereby finds that—

"(a) between 1968 and 1985, there were over eight thousand incidents of international terrorism, over 50 per centum of which were directed against American targets;

"(b) it is an accepted principle of international law that a country may prosecute crimes committed outside its boundaries that are directed against its own security or the operation of its governmental functions;

"(c) terrorist attacks on Americans abroad threaten a fundamental function of our Government: that of protecting its citizens;

"(d) such attacks also threaten the ability of the United States to implement and maintain an effective foreign policy;

"(e) terrorist attacks further interfere with interstate and foreign commerce, threatening business travel and tourism as well as trade relations; and

"(f) the purpose of this chapter is to provide for the prosecution and punishment of persons who, in furtherance of terrorist activities or because of the nationality of the victims, commit violent attacks upon Americans outside the United States or conspire outside of the United States to murder Americans within the United States.

**"SEC. 2332. TERRORIST ACTS AGAINST UNITED STATES NATIONALS ABROAD.**

"(a) Whoever outside the United States commits any murder as defined in section 1111(a) of this title or manslaughter as defined in section 1112(a) of this title, or attempts or conspires to commit murder, of a national of the United States shall upon conviction in the case of murder be punished as provided in section 1111, for manslaughter be punished as provided in section 1112, for attempted murder be imprisoned for not more than twenty years, and for conspiracy be punished as provided by section 1117 of this title, notwithstanding that the offense occurred outside the United States.

"(b) Whoever outside the United States, with intent to cause serious bodily harm or significantly loss of liberty, assaults, strikes, wounds, imprisons, or makes any other violent attack upon the person or liberty of any national of the United States or, if likely to endanger his person or liberty, makes violent attacks upon his business premises, private accommodations, or means of transport, or attempts to commit any of the foregoing, shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

"(c) Whoever, outside of the United States, conspires to commit murder, as defined in section 1111(a) of this title, within the United States of any national of the United States, shall be punished as provided in section 1117 of this title notwithstanding that the offense occurred outside the United States.

"(d) As used in this section, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

"(e) No indictment for this section can be returned without the written approval of the Attorney General or his designee."

(b) The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113, the following:

"113A. Terrorist acts against United States nationals abroad ..... 2331".

Mr. DOLE. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Mr. President, this bill, S. 1429, the Terrorist Prosecution Act, fills a significant gap in our legal arsenal against terrorism by making terrorist attacks against Americans abroad a crime under U.S. law.

The bill was introduced on July 10, 1985, as a modification of a bill originally introduced on September 25, 1984, S. 3018. It was referred to the Subcommittee on Security and Terrorism where hearings were held on July 30, 1985. An amendment in the nature of a substitute was adopted and the bill was passed out of the subcommittee with a vote of 5-0 on November 19, 1985. The Judiciary Committee adopted S. 1429 by unanimous consent on December 12, 1985. The bill has the support of the administration, and is cosponsored by Senators ANDREWS, BORN, COHEN, D'AMATO, DENTON, DURENBERGER, GRASSLEY, HECHT, LEAHY, MCCONNELL, MURKOWSKI, ROTH, LEVIN, and HAWKINS.

S. 1429 is vital to our battle against terrorism, and I urge my colleagues to support it.

Nearly 2½ years ago, the Nation was rocked by a bomb blast that destroyed our marine barracks in Beirut, Lebanon, and took the lives of over 240 marines. As our shock and grief gave way to anger, the cries to bring the terrorists to justice grew louder. Many called for military reprisals. Having spent most of my adult life in law enforcement, I turned first to the law—these terrorists were not soldiers, they were murderers and should be prosecuted in U.S. courts for their heinous crime.

However, a review of current U.S. law revealed that we had no law on the books under which we could try these criminals, even if we caught them. This same gap in our law prevents U.S. prosecution of those who brutally shot two U.S. AID (Agency for International Development) officers during the hijacking of a Kuwaiti airplane in December 1981, or those who shot and killed the Americans at an outdoor cafe in El Salvador.

A recent New York Times article on January 19, 1986, reported State Department legal advisers, Judge Abraham Sofaer, as noting "that no Federal law covers the murder of American citizens abroad, a lack that frustrated efforts to bring indictments against those responsible for slaying four off-duty American marines and two Amer-

ican businessmen in El Salvador last year."

To fill this gap, on September 25, 1984, I introduced S. 3018 to provide for U.S. jurisdiction over terrorist attacks against U.S. agents, officers, and employees. The bill was modified and reintroduced in the 99th Congress on June 27, 1985, as S. 1373. After receiving input from authorities on international law and meetings with administration officials, the bill was further modified to provide U.S. jurisdiction over terrorist attacks on any American abroad and reintroduced as S. 1429 on July 10, 1985.

At the heart of this bill is the notion that international terrorists are criminals and ought to be treated as such—that they should be located promptly, apprehended and brought to trial for their heinous crimes.

In 1984, Congress enacted new laws providing extraterritorial jurisdiction for hostage taking and aircraft sabotage, but murder of U.S. nationals outside our borders and not within the special jurisdiction of the United States, other than of specially designated Government officials and diplomats, is still not a crime under U.S. law.

Judge Sofaer told the Senate Committee on Security and Terrorism during hearings on July 30, 1985, that S. 1429 will fill a significant gap in current U.S. law, and is "warranted by reality and logic, and consistent with international law." Ambassador Oakley concurred, emphasizing that the bill will be a useful tool in "the foreign policy and diplomatic aspects of our antiterrorism effort." Also testifying in support of the bill were Dr. Raymond Cline, senior associate at the Center for Strategic and International Studies, and Leo Byron, a hostage of the TWA hijacking in June 1985, accompanied by his wife, Carolyn, and daughter, Pamela, who were also on the plane.

S. 1429 fills the gap in current law without in any way contravening or conflicting with either international or constitutional law. While criminal jurisdiction is customarily limited to the place where the crime occurred, it is well-established constitutional doctrine that Congress has the power to apply U.S. law extraterritorially if it so chooses. (See e.g., *United States v. Bowman*, 260 U.S. 94 (1922)).

International law also recognizes broad criminal jurisdiction. If an alleged crime occurs in a foreign country, a nation still may exercise jurisdiction over the defendant, pursuant to the "protective principle." If the crime has a potentially adverse effect upon its security or the operation of its governmental functions. This basis for jurisdiction over crimes committed outside the United States has been applied by the Federal courts in contexts ranging from drug smuggling to perjury. Clearly, then, the exercise of U.S. criminal jurisdiction also is justified to

prosecute a terrorist who assaults or murders American nationals abroad. In addition to threatening a fundamental function of our Government—that of protecting its citizens—such attacks undoubtedly have an adverse effect upon the conduct of our Government's foreign affairs, and potentially threaten the security interests of the United States. Terrorist attacks further interfere with interstate and foreign commerce, threatening business travel and tourism, as well as trade relations.

S. 1429 includes a statement of findings and purpose designed to make it clear the act is intended to cover acts of international terrorism, as opposed to bar room brawls or other violence which fails to trigger these national interests. Similarly, the bill specifies that no indictment may be returned under the act without the written approval of the Attorney General or his designee. The intention of this section is to further ensure that application of the law is limited to acts of national interest consistent with the findings and purpose set forth in the act. It is my sense that these provisions are adequate to satisfy this objective and, thus, the bill does not attempt to define terrorism. However, those seeking guidance on this issue can refer to the definition provided in the Foreign Intelligence Surveillance Act, title 50, section 1801(c).

But making terrorist murder a U.S. crime alone will not protect Americans abroad. We must also demonstrate our seriousness by applying the law with fierce determination.

In many cases, the terrorist murderer will be extradited or seized with the cooperation of the government in whose jurisdiction he or she is found. Yet, if the terrorist is hiding in a country like Lebanon, where the government, such as it is, is powerless to aid in his removal, or in Libya, where the government is unwilling, we must be willing to apprehend these criminals ourselves and bring them back for trial. We have the ability to do that right now, under existing law. Under current constitutional doctrine, both U.S. citizens and foreign nationals can be seized and brought to trial in the United States without violating due process of law. See, for example, *Frisbie v. Collins*, 342 U.S. 519, 522 (1952); *Ker v. Illinois*, 119 U.S. 436 (1886).

It may surprise some to hear that such methods are an appropriate way to bring criminals to trial. If someone is charged or chargeable with an offense and is at liberty in some foreign country, it is an accepted principle of law to take that alleged criminal into custody if necessary and return him to the jurisdiction which has authority to try him. That prosecution and conviction is sustainable under the laws of the United States and under international law.

This principle has been in effect for almost 100 years, going back to 1886, in the landmark case of *Ker versus Il-*

linois, where the State of Illinois seized a defendant in Peru, a man being charged with a crime in Illinois, and brought him back to Illinois for trial, where he was convicted. The case went to the Supreme Court of the United States and the Supreme Court of the United States said it was appropriate to try that man in Illinois and to convict him notwithstanding the means which were used to bring him back to trial in that jurisdiction.

That doctrine was upheld in an opinion written by Justice Hugo Black, well known for his concern about defendants' rights, in the case of *Frisbie versus Collins*, handed down by the Supreme Court of the United States in 1952 and upheld in later decisions. No country in the world, no country in the history of the development of law, has more rigorous concepts of the due process of law than the United States of America and the U.S. Supreme Court.

Forcible seizure and arrest is a strong step, but the threat of terrorism requires strong measures, and this is clearly preferable to the alternatives of sending in combat troops or bombing a few neighborhoods.

When I first began urging serious consideration of forcible arrest of terrorists nearly 2 years ago, it drew some criticism. It was a unique idea, borrowed from the days of pirates.

Yet, as critics looked more closely at the solid support for convictions obtained after forcibly seizing criminals, and as the cries for bombing raids and assassinations grew louder, the idea of seizing a terrorist for trial in the United States seemed reasonable.

When Judge Sofaer testified on S. 1429, for example, he stressed his strong support for the bill but made equally clear his concern about the way I have urged it be applied—the use of forcible arrest where necessary. As we discussed it further that morning in the hearing, it became clear that we were really not as far apart as it first appeared. Before the hearing concluded Judge Sofaer and I had agreed that such measures should be taken as a last resort, with extreme caution as an extraordinary step, being aware of the sensitive nature, and only after a decision at the highest level.

On January 19, 1986, the New York Times published an article entitled: "U.S. Is Said To Weigh Abducting Terrorists Abroad for Trials Here." In it, Judge Sofaer is reported as saying he would support "seizure" of fugitives in other countries if the chances for success were reasonable. "He acknowledged that such a move would violate international law," the article went on to note, "but said there were legitimate arguments in favor of 'bending' the rules in extraordinary circumstances."

By the end of that week, on January 25, 1986, the Times ran an editorial supporting "snatching terrorists

abroad," noting it "no longer sounds far-fetched."

Mr. President, the bill we are considering today represents the culmination of one aspect of my ongoing effort of nearly 2 years to develop an effective judicial approach to dealing with terrorism. First introduced as S. 3018 in September 1984, the bill has benefited from the ideas and suggestions of many others concerned about these same problems and from the outstanding leadership in the Senate of Senator JEREMIAH DENTON, chairman of the Judiciary Subcommittee on Security and Terrorism.

In addition to S. 1429, I have also reintroduced a resolution, Senate Resolution 190 on June 27, 1985, to provide for international prosecution of terrorists, expressing the sense of the Senate that the President should call for international negotiations aimed at determining an international definition of terrorism which could then be established as a "universal crime," like piracy, punishable by any nation that captures the terrorists.

Another necessary step in effective prosecution of terrorists as international criminals is to deny the fallacy of the "terrorist-diplomat." I have introduced legislation, S. 1383 and Senate Resolution 191, aimed at preventing any recurrence of the grotesque spectacle we witnessed after the "Libyan shoot out" in London of terrorists walking away from prosecution because of diplomatic immunity, by making it clear that murder is not, and can never be, protected diplomatic activity.

The terrorist diplomat can exist only as a product of state-sponsored terrorism, and it is to this threat that we must next turn our focus. Earlier this year, I introduced legislation to cut off all U.S. trade with Libya because of its support of international terrorism. This proposal was adopted by the Senate as an amendment to the Foreign Assistance Act giving the President authority to summarily cut off trade with Libya and other countries because of its support of international terrorism.

On July 10, 1985, the House passed a similar amendment to the House Foreign Assistance Act mandating a trade boycott of Libya, after I contacted Congressman BENJAMIN GILMAN of New York.

The provision was ultimately enacted and provided authority for the President's recent trade embargo of Libya, announced on January 7, 1986.

Finally, in response to the immediate concerns raised by the TWA hijacking, I introduced a resolution, Senate Resolution 196, calling on the President to work for a worldwide boycott of all international airports that fail to meet adequate security standards. I firmly believe that the United States must take an active role in ensuring the safety of passengers, not



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just on flights leaving our airports, but on all international flights.

These legislative initiatives, along with S. 1429, reflect my conviction that, ultimately, law abiding nations will succeed against this threat to law and order worldwide, not by adopting the terrorists tactics that threaten innocents, but by fiercely maintaining that threatened order and bringing the full force of the law to bear against these most heinous criminals.

Mr. President, I thank the distinguished majority leader for taking time for this bill at this time. I shall briefly summarize at this juncture what this bill does.

At the present time, as a result of legislation in 1984, it is against the laws of the United States to hijack or take hostage our American citizens. There is a significant gap in U.S. law at the present time as to attacks, assaults, or killings of other U.S. citizens abroad.

This bill fills that gap.

For example, Mr. President, there is no law on the books at the present time which would enable the United States to take action for the U.S. citizens who were murdered at the Vienna and Rome airports in the recent incidents, or take action against the terrorists who murdered the 240 marines in Lebanon on October 25, 1983, or to bring to justice the murderers of U.S. citizens at the outdoor cafe in El Salvador, or take action against the terrorists who murdered two AID officers at the airport in Tehran. This bill would fill that gap.

Mr. President, it has long been accepted that the United States, or any nation, may exert extraterritorial jurisdiction for attacks and murder on their citizens abroad. It is high time that there was a comprehensive criminal code to protect American citizens around the world from such acts of terrorism.

Mr. President, there has been a great deal of tough talk about terrorism, but very little tough action. The enactment of this measure will enable the United States to supplement the tough talk with some tough action.

There is at the present time, largely unknown but a fact, that the three terrorists who hijacked the TWA plane are now under indictment, with such charges having been issued by the U.S. District Court for the District of Columbia. This bill will put on the books a measure which will protect American citizens abroad under all circumstances from acts of terrorism.

What happens next, Mr. President, in terms of bringing terrorists to justice, is a complex matter but it is worth noting that for 100 years now the Supreme Court of the United States has upheld convictions where criminals are brought back to the United States for trial regardless of the methods by which they are brought back.

In a celebrated case called *Ker* against Illinois, the State of Illinois

had brought charges against a man by the name of Ker who fled to Peru. Illinois officials went to Peru, arrested Ker, brought him back to the United States, and he was convicted. That prosecution was upheld by the Supreme Court of the United States in a decision which has been followed many times, with one opinion written by Justice Hugo Black, a noted civil libertarian.

In terms of bringing a terrorist to justice, that has to be very carefully considered. When these ideas were first offered in legislation by this Senator some years ago, there was some substantial criticism in trying to use the Ker doctrine to try to bring terrorists to justice in the United States. As we have seen a proliferation of terrorism, as we have seen other procedures not effective, as we have seen an effort at economic sanctions—which is a good first step but unfortunately not joined in by our colleagues—retaliatory attacks have been considered and rejected, we have been searching for ways to deal with terrorism. The criminal laws have doctrines with considerable force, and those doctrines can be effectively used in bringing terrorists to justice and bringing them to the United States for trial, for prosecution, and conviction.

I ask unanimous consent that the text of a New York Times editorial for January 26, 1986, be incorporated in the Record. It is entitled "Snatching Terrorists Abroad," which is a succinct statement and a policy justification for this kind of enforcement and action.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the New York Times, Jan. 25, 1986]

#### SNATCHING TERRORISTS ABROAD

If other nations can't catch terrorists or refuse to surrender them, why shouldn't Americans snatch suspects wherever they can and bring them to justice in the United States? That question no longer sounds far-fetched.

The violence against Americans abroad and the failure of other nations to take it seriously have aroused Washington's interest in every conceivable countermeasure. Prudence and justice argue for striking directly at guilty terrorists. Why not take them where we can?

The main obstacles are other nations' rights and sensibilities. Governments that put a much lower priority on arresting terrorists may well regard kidnapping by American agents as a crime. They also cherish their sovereignty and insist on making their own choices about whom to arrest and to extradite. Some may also fear retribution by terrorists or remember that the United States itself has sometimes refused to deliver fugitives under extradition treaties that exclude crimes labeled "political."

Still, while other nations are unlikely to give advance approval, some might quietly applaud or even assist in specific arrests of properly charged fugitives. American judges traditionally have not inquired about how a suspect is brought before them, only whether he's been duly charged. America's known regard for defendants' rights, and President Reagan's rejection of reckless retaliation

against innocents abroad, are strong arguments for trying to bring some fugitives to account here.

Probably the strongest argument for unilateral action is the failure of international efforts to punish either terrorists or their sponsors. Our European allies, having refused to join in economic sanctions or airline groundings, would find it harder to object to discreet American efforts at self-protection.

Responsible Americans are not talking about a shootout on a busy Paris street. They do, however, want to warn nations that harbor the likes of Mohammed Abbas that they risk the humiliation of having him snatched away. That alone might keep him and others in distracted flight.

Mohammed Abbas is under Federal indictment, charged with plotting the Achille Lauro hijacking, with its cold-blooded murder of a disabled American. He was caught when American planes intercepted the hijackers' escape plane but was then rashly released, first by Italy, then Yugoslavia, despite a strong American showing that he was extraditable. He is a prime candidate for capture if American agents can manage it.

Such snatchings are no substitute for sustained antiterrorist campaigns, including infiltration of suspect groups. They are no substitute for joint action when it can be negotiated. But they can bring some murderers to justice and relieve the pent-up American frustration that might otherwise provoke truly rash action.

Mr. SPECTER. The enactment of this bill will give us a good weapon in our arsenal which will enable us to consider a variety of alternatives to bring terrorists to justice. It will be a great day in our battle against terrorism worldwide to bring terrorists to the Federal court here in Washington, DC, for prosecution, conviction, and punishment. I thank the Chair.

Mr. BIDEN. Mr. President, I would like to take a minute to say that I was interested to note that when we were told this was going to come up and I was suggested as the ranking member to manage this, I asked the staff to check if it was brought up as a noncontroversial bill. The only reason it is noncontroversial is because of the efforts of the Senator from Pennsylvania. The Senator from Pennsylvania addressed this issue in the Judiciary Committee, as he indicated, several years ago, and there then was a good deal of controversy about whether or not the direction he was seeking to go was proper and whether the whole window of law he was seeking to close should be closed.

So I rise to compliment the Senator from Pennsylvania for his diligence and for his persistence in this matter.

Mr. President, I rise in support of S. 1429, the Terrorist Prosecution Act. The purpose of this bill is to provide for the prosecution and punishment of persons who, in furtherance of terrorist activities or because of the nationality of the victims, commit violent attacks upon Americans outside the United States or conspire outside of the United States to murder Americans within the United States.

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The legal underpinnings of this bill are sound. It is an accepted principle of international law that a country may prosecute crimes committed outside its boundaries that are directed against its own security or the operation of its governmental functions. Terrorist attacks against Americans threaten such a fundamental function of our Government—that of protecting its citizens.

Mr. President, terrorism is antithetical to the rule of law; yet, to the extent feasible, it is the rule of law upon which we must rely to fight terrorism. What is needed in the fight against terrorism is not a suspension of the very values that we as a Nation seek to embody, but an affirmation of those values by bringing the rule of law to bear on terrorist activity. It is appropriate and necessary, therefore, that we employ every legal mechanism within our power to punish those who commit terrorist acts against Americans, yet doing so in a way that respects the rule of law that we as a nation revere.

Mr. President, in conclusion I would like to commend Senators SPECTER, DENTON, and LEAHY for their commitment to seeing this legislation through. This is a very difficult area to legislate, and I think they have come up with a very good product that I believe will have tangible results in combatting terrorist attacks against Americans.

Mr. SPECTER. I have one further comment, Mr. President. I thank the distinguished Senator from Delaware for his very general and kind remarks.

Mr. LEAHY. Mr. President, the hijacking of the *Achille Lauro* and the recent atrocities at the Rome and Vienna airports, have given new urgency to the debate over the proper U.S. response to international terrorism.

The United States needs a comprehensive counterterrorism strategy. Part of that strategy must be to improve our intelligence so the discriminate use of force against terrorists who have committed or are about to commit violent acts becomes feasible and legitimate.

Our strategy must also include laws which provide for the criminal prosecution in the United States of terrorists over whom we can obtain jurisdiction through extradition and other means.

Remarkably, under current law, the murder of U.S. citizens outside our borders, other than of certain government officials and diplomats, is not a crime.

The Terrorist Prosecution Act will close this serious GAP in our arsenal against terrorists, by providing for long jail sentences for individuals who conspire to commit or commit terrorist assaults, murders, or kidnappings against Americans abroad.

As ranking member of the Subcommittee of Security and Terrorism, I am proud to have worked with Chairman

DENTON and Senator SPECTER on a draft of this bill which I have cosponsored and which has the strong support of the State and Justice Departments and all members of the Judiciary Committee.

Terrorism will continue to plague us in the future. There are no simple solutions, but we should have every weapon at our disposal. I urge my colleagues to give this bill their wholehearted support.

Mr. DENTON. Mr. President, I rise in support of S. 1429, the Terrorist Prosecution Act, a bill to amend title 18, United States Code, to authorize prosecution of terrorists and others who attack U.S. nationals abroad.

In reviewing the subject of international terrorism, the Judiciary Subcommittee on Security and Terrorism, which I chair, has collected sufficient evidence, through hearings, to conclude that there is more to terrorism than just a series of unrelated violent events perpetrated by several unrelated groups.

There is for example a clear pattern of Soviet supported and equipped insurgencies seeking to destabilize, by revolution, whole regions such as Southern Africa, to politicize established religion, such as in Nicaragua and the Middle East, and to export violence against the democratic governments of neighboring states.

The trends are clear. Cooperation among terrorist groups is increasing. In some instances drug money finances the violence. The lethality of the action is becoming greater as more powerful and more sophisticated weapons are employed. There is increasing disregard for the innocent. More diplomats and world leaders are targets. More innocent civilians are made into pawns. United States' interests are the No. 1 target.

The pattern that emerges from studying the testimony obtained in more than 60 hearings before the Subcommittee on Security and Terrorism, and more recently in joint hearings with the Judiciary Committee and Foreign Relations Committee, is that terrorism is the most widely practiced form of modern warfare. It is both a major force and a major trend in foreign affairs.

How successful have we been in dealing with terrorist warfare against our commerce, soldiers, diplomats, facilities, leaders, and private citizens? Not very. We in Congress sometimes adopt self-defeating, even contradictory, measures that often put us at odds with our friends and allies. Most people are outraged at the violence of terrorism as depicted by the daily news, but that rage is short-lived.

We have come to a point that requires that we establish both a foreign and domestic policy for dealing with the obvious threat.

U.S. policy on terrorism is fragmented and only partially developed. I believe that it is essential that we determine the degree of the threat to our

interests, set our goals and objectives, and then develop a policy and commitments. From there, we must explain our policy so that we can build a consensus that will enable us to persevere and to succeed over the long haul.

Terrorism must be dealt with on many fronts and a military response alone will not suffice. First, we must have laws that are sufficient to meet the threat. We must have a mechanism capable of enforcing these laws. We must pursue diplomatic initiatives and our allies must stand firm with us on this issue. We must in the end be prepared to employ a full range of sanctions: legal, diplomatic, economic, and military.

S. 1429, introduced by my distinguished colleague from Pennsylvania, Senator SPECTER, will allow for prosecution in the United States of individuals who commit terrorist murders against U.S. nationals abroad. I believe that S. 1429, with the amendments suggested by the Department of Justice and offered at the Subcommittee by Senator LEAHY and myself for Senator SPECTER, represents a step forward in our ongoing fight against terrorism.

I urge my colleagues to support S. 1429.

Thank you, Mr. President.

Mr. HATCH. Mr. President, I rise in support of Senate bill S. 1429, introduced by my colleague Senator SPECTER. The bill seeks to authorize prosecution of terrorists who attack U.S. Nationals abroad. It does this by expanding the jurisdiction of U.S. courts overseas. The crimes in question include murder, manslaughter, conspiracy to murder, and assault. In addition, it also makes it a crime to conspire outside the United States to commit murder within the United States and to commit the murder of any U.S. national.

Although I regret that the bill does not define terrorism per se, and although I believe in the need for a statutory definition of international terrorism, this bill develops the nationality theory of jurisdiction. In other words, and attack upon any U.S. citizen abroad, or a conspiracy to engage in such attack, if it includes the crimes I have just listed, grants jurisdiction to U.S. courts to try the offenders in question, once the United States has apprehended them. Among other things, this will prevent a situation similar to that of the murder of Leon Klinghoffer aboard the *Achille Lauro*, when the United States was truly unable to claim a proper jurisdiction in that instance.

What this act really does is to develop the nationality theory of jurisdiction, a theory already claimed by Israel and France, among others. An attack upon and American citizen abroad, and fits one of the above crimes, makes the attack a criminal act under our Federal Criminal Code. This is a most desirable approach in

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these days of a shrunken world made small by modern science and technology.

Mr. President, the United States, if it is to be at all successful in combating the terrorist threat, must put its words into deeds. This is the only way to serve notice on terrorist offenders that the United States will no longer allow them to escape the consequences of their bloody acts. How we obtain or apprehend the terrorist offenders is another question. I note that many of my colleagues, and the administration also, will not rule out abduction. Nor do I, Mr. President, if that is the only way to get these vile murderers to American shores.

One thing is clear. We cannot afford the further shedding of innocent blood or to allow political fanatics to make civilization itself their hostage. S. 1429 is a good bill because it enhances the reach of the American criminal justice system in its attempts to bring these barbaric criminals to justice. Mr. President, I urge support of S. 1429. It is a first step toward restoring legal sanity in a world reeling from terror-violence. It serves notice on terrorists and violent-wrongdoers abroad that American justice will not be denied.

Mr. SPECTER. Mr. President, I believe we are ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

I also announce that the Senator from Maryland [Mr. MATHIAS] is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota [Mr. DURENBERGER] would vote "yea."

Mr. CRANSTON. I announce that the Senator from Ohio [Mr. GLENN], the Senator from Maine [Mr. MITCHELL], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I further announce that the Senator from Hawaii [Mr. INOUE] is absent because of illness in the family.

I also announce that the Senator from Nebraska [Mr. EXON] is absent because of illness.

I further announce that, if present and voting, the Senator from Maine [Mr. MITCHELL] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 0, as follows:

(Rollcall Vote No. 17 Leg.)

## YEAS—92

Abdner	Gore	Metzenbaum
Andrews	Gorton	Moynihan
Armstrong	Gramm	Murkowski
Baucus	Grassley	Nickles
Bentzen	Harkin	Nunn
Biden	Hart	Packwood
Bingaman	Hatch	Pell
Boren	Haflield	Persim
Boschwitz	Hawkins	Proxmire
Bradley	Hecht	Pryor
Bumpers	Heflin	Quayle
Burdick	Helms	Riegle
Byrd	Heins	Rockefeller
Chafee	Hollings	Roth
Chiles	Humphrey	Rudman
Cochran	Johnston	Sabates
Cohen	Kassebaum	Sasser
Cranston	Kasten	Sumner
D'Amato	Kennedy	Simpson
Danforth	Kerry	Specter
DeConcini	Lautenberg	Stafford
Denton	Laxalt	Stevens
Dixon	Leahy	Symms
Dodd	Levin	Thurmond
Dole	Long	Tyrlie
Domenici	Lugar	Wallop
Eagleton	Matsunaga	Warner
East	Mattlingly	Welcker
Evans	McClure	Wilson
Ford	McConnell	Zorinsky
Garn	Meicher	

## NAYS—0

## NOT VOTING—8

Durenberger	Goldwater	Mitchell
Exon	Inouye	Stennis
Glenn	Mathias	

So the bill (S. 1429), as amended, was passed, as follows:

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*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Terrorist Prosecution Act of 1985".*

SEC. 2. (a) Part I of title 18, United States Code, is amended by inserting after chapter 113 the following:

**"CHAPTER 113A—TERRORIST ACTS AGAINST UNITED STATES NATIONALS ABROAD**

**"2331. Findings and purpose.**

**"2332. Terrorist acts against United States nationals abroad.**

**"SEC. 2331. FINDINGS AND PURPOSE.**

*"The Congress hereby finds that—*

*"(a) between 1968 and 1985, there were over eight thousand incidents of international terrorism, over 50 per centum of which were directed against American targets;*

*"(b) it is an accepted principle of international law that a country may prosecute crimes committed outside its boundaries that are directed against its own security or the operation of its governmental functions;*

*"(c) terrorist attacks on Americans abroad threaten a fundamental function of our Government: that of protecting its citizens;*

*"(d) such attacks also threaten the ability of the United States to implement and maintain an effective foreign policy;*

*"(e) terrorist attacks further interfere with interstate and foreign commerce,*

*threatening business travel and tourism as well as trade relations; and*

*"(f) the purpose of this chapter is to provide for the prosecution and punishment of persons who, in furtherance of terrorist activities or because of the nationality of the victims, commit violent attacks upon Americans outside the United States or conspire outside of the United States to murder Americans within the United States.*

**"SEC. 2332. TERRORIST ACTS AGAINST UNITED STATES NATIONALS ABROAD.**

*"(a) Whoever outside the United States commits any murder as defined in section 1111(a) of this title or manslaughter as defined in section 1112(a) of this title, or attempts or conspires to commit murder, of a national of the United States shall upon conviction in the case of murder be punished as provided in section 1111, for manslaughter be punished as provided in section 1112, for attempted murder be imprisoned for not more than twenty years, and for conspiracy be punished as provided by section 1117 of this title, notwithstanding that the offense occurred outside the United States.*

*"(b) Whoever outside the United States, with intent to cause serious bodily harm or significant loss of liberty, assaults, strikes, wounds, imprisons, or makes any other violent attack upon the person or liberty of any national of the United States or, if likely to endanger his person or liberty, makes violent attacks upon his business premises, private accommodations, or means of transport, or attempts to commit any of the foregoing, shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.*

*"(c) Whoever, outside of the United States, conspires to commit murder, as defined in section 1111(a) of this title, within the United States of any national of the United States, shall be punished as provided in section 1117 of this title notwithstanding that the offense occurred outside the United States.*

*"(d) As used in this section, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).*

*"(e) No indictment for this section can be returned without the written approval of the Attorney General or his designee."*

*(b) The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113, the following:*

*"113A. Terrorist acts against United States nationals abroad..... 2331".*

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCONNELL. Mr. President, I am pleased the Senate voted by such a wide margin to support this legislation. I commend the dedicated effort of my colleague, Senator SPECTER, in shepherding this bill through the Judiciary Committee and to the floor.

I think it was surprising to many of us that there was this open window in our law. It is difficult to imagine why the murderers of U.S. citizens travel-



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ing abroad should be accorded status different from hijackers and hostage takers.

Murder of any U.S. citizen should be a crime. The question of apprehension and prosecution should not depend on where the crime occurs or whether the American enjoys the status of a Government official. Murder is just as wrong and just as much anguish for the victim's family whether it occurs here or abroad.

The bill is carefully crafted to ensure only acts of terrorism are covered, not back alley fights. It also requires the approval of the Attorney General or his designee to return an indictment under the act. Clearly, it addresses crimes with national implications, crimes which threaten international travel and tourism as well as trade relations.

While criminal jurisdiction is usually limited to the site of the crime, it is clearly within constitutional doctrine to extend it extraterritorially. We have extended jurisdiction in a wide variety of cases including drug smuggling.

Given the grievous nature of the crime of murder, I would suggest Congress is both legally obligated and morally bound to extend the sphere of our criminal code to protect U.S. citizens abroad. Leon Klinghoffer's family should have the confidence of U.S. law that his brutal murderers can and will be brought to justice.

#### ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 5:30 p.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER (Mr. HATCH). Without objection, it is so ordered.

#### TASK FORCE ON ELDER ABUSE ACT OF 1985

Mr. DOLE. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of S. 1919, the Task Force on the Elder Abuse Act.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows: A bill (S. 1919) to establish a task force to examine the issues associated with abuse of the elderly.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

There being no objection, the Senate proceeded to consider the bill.

Mr. ANDREWS. Mr. President, I rise today to reaffirm my commitment to eliminate the abuse of our Nation's senior citizens. Last December, I introduced S. 1919, legislation that would create a task force to define and ana-

lyze the causes of elderly abuse; examine and assess methods of educating and encouraging cooperative efforts among the general public, health officials and appropriate agencies; and suggest remedial actions that can be undertaken in both the public and private sectors to eliminate this heinous crime.

Although Congress has addressed and sought to remedy the problems of child and spouse abuse, very little has been done to ease the plight of those among our senior citizens subject to such treatment. This legislation, Mr. President, is a first step in what I firmly believe is the right direction. Abuse of the elderly is a wide ranging, multifaceted problem encompassing physical, emotional, and economic mistreatment. It is a problem that this administration and this Congress can no longer ignore. Implicit in S. 1919 is a willingness to indeed recognize that many of our older friends and neighbors are victims of abuse. They are victims, Mr. President, of what can only be viewed as another American tragedy. For far too many people, the reality of growing old has become a living nightmare. I speak of a reality in which dignity is destroyed, hope is trampled, dreams are denied, and the human spirit is laid to waste.

The elderly are a vital and productive part of our society. They are a living and vital link to our past and a stepping stone to our future. They enrich us with their experience and sustain us with their knowledge. As a civilized society we have a responsibility to protect them and to do otherwise would be unconscionable.

The great English poet John Donne wrote that "No man is an island entire of itself, every man is a piece of the continent, a part of the main." We are all a part of the main, Mr. President, and as a part of mankind we must join forces to put an end to the abuse and victimization of our senior citizens. Mr. President, I am pleased to see this legislation move forward, and I thank my colleagues for their support. Without their help and cooperation, the road traveled thus far would surely have been much more difficult.

Mr. CRANSTON. Mr. President, I rise today to voice my support for S. 1919, the proposed "Task Force on Elderly Abuse Act of 1985", introduced by my colleague from North Dakota, Senator ANDREWS, in an effort to address the tragic and growing national problem of elderly abuse. I am honored to count myself among the original cosponsors of this legislation.

Passage of this legislation will mark the commitment of the U.S. Senate to seeking a greater understanding of the extent, causes, and—most importantly—the prevention of the abuse of elderly Americans.

It is estimated that at least 1.1 million—1 in every 25—elderly Americans are the victims of abuse each year. The actual incidence of elder abuse, however, may be many times greater

as 4 out of 5 cases are believed to go unreported.

Mr. President, the legislation before us today offers hope that we can find ways to turn around these alarming statistics. Under this bill, a 17-member task force under the direction of the Secretary of Health and Human Services will examine the problem of elderly abuse and submit within 9 months to the Congress and the President a written report of its findings and recommendations. The findings of the Elderly Abuse Task Force can thus serve as an important resource in this area.

Mr. President, the proposed "Task Force on Elderly Abuse Act" represents a crucial step in our efforts to address effectively the national tragedy of elderly abuse. I urge my colleagues to support this vital legislation.

Mr. HEINZ. Mr. President, I applaud this Chamber's prompt consideration and speedy passage of legislation to create a national task force on elder abuse.

Our Nation's senior citizens, like America's children, represent a valuable national resource. Their "golden years" culminate a lifetime invested in this country's peace and prosperity—as worker, teacher, soldier, parent. They are a window on our past and a pathway to our future.

Yet too often this window clouds, the pavement cracks when these most venerable—and most vulnerable—individuals fall victim to abuse.

In the five-county area of my own hometown of Pittsburgh, 162 reports of elder abuse were made in a 12-month period ending this past June. Although physical maltreatment accounts for about 75 percent of reported cases, many abusers of the elderly employ more subtle, yet equally devastating, means.

Take the case of a 74-year-old stroke victim, left strapped to a wheel chair each day, to sit in her own urine and feces. Or the 85-year-old woman whose daughter takes her Social Security checks and spends them for shopping sprees and drugs. Or the "devoted" son who refuses to allow his elderly mother to eat.

If a nation is judged in part by how it treats its aged citizens, then we must don a hair shirt of shame. Shame that 1 million elderly Americans may be victims of abuse each year, with that number increasing by 100,000 in just 4 years. Shame that we spend less than \$3 on protective services for each elder abuse victim—while we spend seven times that amount for child abuse victims. Shame that in a nation where the 75-plus is the fastest growing segment of the population, and statistically the most at risk of abuse, we know so very little about the extent of the problem, even less about the causes, and nothing at all about solutions.

Mr. President, what we do know is that family caregivers, not personnel